



COMMONWEALTH OF MASSACHUSETTS

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February 10, 2022

Tamar Finn
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1111 Pennsylvania Avenue, N.W.
Washington, DC 20004
Counsel for DSCI, LLC

RE: DSCI, LLC Request for Waiver of Mass Migration Requirements (D.T.E. 02-28)

Dear Ms. Finn,

On January 7, 2022, DSCI, LLC ("DSCI") filed a Request for Waiver of Mass Migration Requirements ("Petition"). In the Petition, DSCI requests a waiver of the Department of Telecommunications and Cable's ("Department") Mass Migration Requirements, to the extent applicable, as they relate to DSCI's discontinuance of certain retail business services in Massachusetts. In support of the Petition, DSCI states that its "proposed partial discontinuance is not a 'mass migration' because (1) DSCI is not exiting the Massachusetts market and will continue providing local voice service, (2) DSCI is not selling its customers to an acquiring provider and (3) DSCI has offered affected customers alternative means of using and connecting to DSCI's services." Petition at 1. The Department need not determine whether the Mass Migration Requirements apply to DSCI's situation, because if they do apply, DSCI has shown good cause for waiver. Accordingly, the Department grants DSCI's request as described below.

In 2002, the Department established procedures to enable the orderly migration of large numbers of customers from a telecommunications service provider discontinuing service in all or part of the Massachusetts market to another carrier without interruption of service. *In re Requirements for Mass Migrations of Telecomms. Serv. End-Users*, D.T.E. 02-28, *Order* at 1, 8 (Aug. 7, 2002) ("02-28 Order").¹ The Department stated that a carrier must demonstrate good cause for a waiver of the Mass Migration Requirements. *Id.* at 9. In doing so, the Department "recognize[d] the benefits of flexibility in" its administration of the Mass Migration Requirements. *Id.*

¹ The Mass Migration Requirements are found as an attachment to the 02-28 Order.

In this case, DSCI is discontinuing certain business services in Massachusetts but asserts that there is no need to migrate its customers to another carrier because DSCI will offer substitute voice services to the customers of its discontinued services. *See* Petition at 1, 4. DSCI states that the Mass Migration Requirements “shall apply when ‘a CLEC is exiting the local exchange services market, or a portion of its market, and has a customer base to migrate to other carriers.’” *Id.* at 4 (quoting the Mass Migration Requirements). DSCI argues that its planned discontinuance is not a mass migration because the company “is not migrating its customers to an acquiring provider.” *Id.*

The Department finds that even if the Mass Migration Requirements apply to DSCI’s discontinuance, DSCI has demonstrated good cause for waiver. *See 02-28 Order* at 9. A Department determination of good cause is “based on a balancing of the public interest, the interest of the party seeking an exception, and the interests of any other affected party.” *Investigation by the Dep’t of Telecomms. & Cable on its own motion, pursuant to G.L. c. 159 §§ 12, 32 & 39, & G.L. c. 166 §§ 11 & 12, regarding the failure by individually-named common carriers of telecoms. servs. to file an annual return for calendar year 2018*, D.T.C. 21-AR, *Final Order* at 6 (Nov. 22, 2021) (“21-AR Order”); *N.E. Tel. & Tel. Co., D.P.U. 94-50, Order* at 51 (May 12, 1995) (citing *Boston Edison Co., D.P.U. 90-335-A, Order on Motion for Clarification &/or Reconsideration & on Request to Defer Filing of DSM Budgets* at 4 (July 14, 1992)).

The Department’s primary goal in establishing the Mass Migration Requirements was to prevent interruption of service to subscribers. *See 02-28 Order* at 8, 12 (noting that avoiding interruption of service is in the public interest); Mass Migration Requirements at 3. DSCI’s plan to offer substitute DSCI voice services to the customers of its discontinuing plans achieves this goal. *See* Petition at 4. Although the substitute services and service plans that DSCI will offer in this case are not identical to the services and service plans it is discontinuing, the Mass Migration Requirements do not require such likeness. *See 02-28 Order* at 11; Petition at 3-4. In adopting the Mass Migration Requirements, the Department acknowledged the potential inconvenience involved in customers having to switch to a different service plan but found that such inconvenience can be mitigated by adequate and timely notice to affected customers. *02-28 Order* at 11. In this case, DSCI has afforded customers at least 60 days’ notice of its planned discontinuance. *See* Petition at 3-4.² This notice mitigates any inconvenience the discontinuance will cause.

In addition, it is significant that DSCI’s discontinuance will not impact any residential customers, and of those business customers impacted, none are critical infrastructure customers. *See* Petition at 2; *cf., e.g., Investigation by the Dep’t of Telecomms. & Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New*

² DSCI states that it notified affected customers of the planned discontinuance on December 10, 2021. Petition at 3-4. DSCI also states that it planned to begin discontinuing lines on February 1, 2022, which would have given certain customers only 52 days’ notice. *Id.* After filing the Petition, however, the Federal Communications Commission issued a Public Notice indicating its anticipated approval of the discontinuance on February 11, 2022. *Comments Invited on Section 214 Application(s) to Discontinue Domestic Non-Dominant Carrier Telecomms. Servs.*, Public Notice, WC Docket No. 22-8 (Jan. 11, 2022). Given this revised date of discontinuance, all affected Massachusetts customers will have received at least 60 days’ notice of the discontinuance. *See* E-mail from Danielle Burt, Counsel for DSCI, to Sean Carroll, Gen. Counsel, Dep’t (Jan. 12, 2022) (on file with the Department).

England, Inc. d/b/a Verizon Mass.’ intrastate retail telecomms. servs. in the Commonw. of Mass., D.T.E. 01-31, Verizon Mass. Para. R Petition (Nov. 14, 2019) (approved by the Department on Feb. 6, 2020).

Applying the Department’s good-cause standard, the Department determines that despite any potential inconvenience to DSCI’s business customers in this situation, the availability of alternative voice services with the same carrier, the adequate notice to impacted customers, the lack of critical infrastructure involved, and, in particular, the lack of service interruption all weigh in favor of a waiver. *See 02-28 Order* at 8 (finding avoiding service interruption to be in the public interest); Mass Migration Requirements at 3. Accordingly, balancing the public interest, DSCI’s interests, and the interests of DSCI’s impacted business customers, the Department finds that DSCI has demonstrated good cause for a waiver in this situation should the Mass Migration Requirements apply. *See 21-AR Order* at 6; *02-28 Order* at 9 (affording the Department flexibility in its administration of the Mass Migration Requirements).

Accordingly, the Department grants DSCI’s request as described above.

By Order of the Department,



Karen Charles Peterson
Commissioner

cc: Jennifer Rohrbach, Director, Regulatory Compliance, U.S. TelePacific Holdings Corp.
Sean Carroll, General Counsel, Department
Lindsay DeRoche, Competition Director, Department
Michael Mael, Senior Financial Analyst, Department

RIGHT OF APPEAL

Pursuant to G.L. c. 25, § 5 and G.L. c. 166A, § 2, an appeal as to matters of law from any final decision, order or ruling of the Department may be taken to the Supreme Judicial Court for the County of Suffolk by an aggrieved party in interest by the filing of a written petition asking that the Order of the Department be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Department within twenty (20) days after the date of service of the decision, order or ruling of the Department, or within such further time as the Department may allow upon request filed prior to the expiration of the twenty (20) days after the date of service of said decision, order or ruling. Within ten (10) days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court of the County of Suffolk by filing a copy thereof with the Clerk of said Court. Appeals of Department Orders on basic service tier cable rates, associated equipment, or whether a franchising authority has acted consistently with the federal Cable Act may also be brought pursuant to 47 C.F.R. § 76.944.